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(By Mr. Speaker (Mr. Thompson) and Delegates
Craig, Hunt, Marcum, Caputo, Ferro,
R. Phillips, Williams and Boggs)

[Introduced March 22, 2013; referred to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-13BB-3 of the Code of West
Virginia, 1931, as amended, relating to including methane
monitoring equipment as eligible safety equipment for tax
credit purposes.

Be it enacted by the Legislature of West Virginia:

That §11-13BB-3 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

**ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY TAX
CREDIT ACT.**

§11-13BB-3. Definitions.

(a) Any term used in this article has the meaning ascribed by
this section unless a different meaning is clearly required by the
context of its use or by definition in this article.

(b) For purposes of this article, the term:

(1) "Certified eligible safety property" means eligible safety

1 property in which an eligible taxpayer has made qualified
2 investment for which credit has been certified under this article.

3 (2) "Coal mining company" means:

4 (A) ~~Any~~ A person subject to tax imposed on the severance of
5 coal by section three, article thirteen-a of this chapter; or

6 (B) ~~Any~~ A person working as a contract miner of coal, ~~which~~
7 ~~mines~~ mining coal in this state, under contract with a person
8 subject to tax imposed on the severance of coal by section three,
9 article thirteen-a of this chapter.

10 (3) "Director" means the Director of the Office of Miners'
11 Health, Safety and Training or West Virginia Office of Miners'
12 Health, Safety and Training established under article one, chapter
13 twenty two-a of this code.

14 (4) "Eligible safety property" means safety technology
15 equipment that, at the time of acquisition, is on the list of
16 approved innovative mine safety technology: Provided, That eligible
17 safety property includes machine mounted methane monitors required
18 by section forty-three, article two, chapter twenty-two-a of this
19 code.

20 (5) "Eligible taxpayer" means a coal mining company ~~which~~ that
21 purchases eligible safety property.

22 (6) "List of approved innovative mine safety technology" means
23 the list required to be compiled and maintained by the Mine Safety
24 Technology Task Force and approved and published by the director

1 under this article.

2 (7) "Office of Miners' Health, Safety and Training" or "West
3 Virginia Office of Miners' Health, Safety and Training" means the
4 Office of Miners' Health, Safety and Training established under
5 article one, chapter twenty two-a of this code.

6 (8) "Person" includes any corporation, limited liability
7 company or partnership.

8 (9) "Qualified investment" means the eligible taxpayer's
9 investment in eligible safety property pursuant to a qualified
10 purchase as qualified and limited by section six of this article.

11 (10) "Qualified purchase" means and includes only acquisitions
12 of eligible safety property for use in this state.

13 (A) A lease of eligible safety property may constitute a
14 qualified purchase if the lease was entered into and became
15 effective at a time when the equipment is on the list of approved
16 innovative mine safety technology and if the primary term of the
17 lease for the eligible safety property is five years or more.
18 Leases having a primary term of less than five years do not
19 qualify.

20 (B) "Qualified purchase" does not include:

21 (i) Purchases or leases of realty or any cost for, or related
22 to, the construction of ~~any~~ a building, facility or structure
23 attached to realty;

24 (ii) Purchases or leases of ~~any~~ property not exclusively used

1 in West Virginia;

2 (iii) Repair costs including materials used in the repair
3 unless, for federal income tax purposes, the cost of the repair
4 must be capitalized and not expensed;

5 (iv) Motor vehicles licensed by the ~~Department~~ Division of
6 Motor Vehicles;

7 (v) Clothing;

8 (vi) Airplanes;

9 (vii) Off-premises transportation equipment;

10 (viii) Leases of tangible personal property having a primary
11 term of less than five years; ~~shall not qualify;~~

12 (ix) Property that is used outside this state; and

13 (x) Property that is acquired incident to the purchase of the
14 stock or assets of an industrial taxpayer ~~which property~~ that was
15 or had been used by the seller in his or her industrial business in
16 this state or in which investment was previously the basis of a
17 credit against tax taken under any other article of this chapter.

18 (C) Acquisitions, including leases, of eligible safety
19 property may constitute qualified purchases for purposes of this
20 article only if:

21 (i) The property is not acquired from a person whose
22 relationship to the person acquiring it would result in the
23 disallowance of deductions under Section 267 or 707(b) of the
24 United States Internal Revenue Code of 1986, as amended;

1 (ii) The property is not acquired from a related person or by
2 one component member of a controlled group from another component
3 member of the same controlled group but the Tax Commissioner may
4 waive this requirement if the property was acquired from a related
5 party for its then fair market value; and

6 (iii) The basis of the property for federal income tax
7 purposes, in the hands of the person acquiring it, is not
8 determined, in whole or in part, by reference to the federal
9 adjusted basis of the property in the hands of the person from whom
10 it was acquired or under Section 1014(e) of the United States
11 Internal Revenue Code of 1986, as amended.

12 (11) "Safety technology" means depreciable tangible personal
13 property and equipment, other than clothing, principally designed
14 to directly minimize workplace injuries and fatalities in coal
15 mines.

16 (12) "Taxpayer" means ~~any~~ a person subject to any of the taxes
17 imposed by article thirteen-a, twenty-three or twenty-four of this
18 chapter.

NOTE: The purpose of this bill is to define eligible safety property as including methane monitoring equipment.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.